

REMARKS

This Amendment responds to the Office Action mailed October 13, 2010 in the above-identified application. Based on the foregoing amendments and the following comments, allowance of the application is respectfully requested.

Claims 1-34 were previously pending in the application. By this Amendment, claims 1, 25, 27 and 34 have been amended, and claim 8 has been canceled without prejudice or disclaimer. Accordingly, claims 1-7 and 9-34 are currently pending, with claim 1 being the sole independent claim. The amendment to claim 1 finds clear support in the original application at least at page 5, lines 24-34 and page 7, line 26 to page 8, line 4. No new matter has been added.

The Examiner's courtesy in conducting a telephone interview with Applicant's undersigned attorney on January 7, 2011 is acknowledged with appreciation. During the interview, the claimed invention and the cited Zimmerman and Terada references were discussed. The Examiner indicated that a limitation to the effect that the flow resistance device is interchangeable appears to be allowable over the prior art of record. Applicant's attorney indicated that the proposed limitation would be discussed with the Applicant.

The Examiner has objected to claims 1 and 8 under 37 C.F.R. §1.75(c) as failing to further limit the subject matter of the previous claim. Claim 8 has been canceled, and withdrawal of the objection is respectfully requested.

The Examiner has rejected claims 25-27 and 34 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner asserts that the phrase "for example" renders claim 25 indefinite. Claim 25 has been amended to delete all instances of the phrase "for example". In addition, claims 27 and 34 have been amended to delete the term "approximately". Accordingly, the amended claims are in compliance with 35 U.S.C. §112, second paragraph, and withdrawal of the rejection is respectfully requested.

The Examiner has rejected claims 1-3, 7-9, 11, 12, 16, 20 and 28-30 under 35 U.S.C. §103(a) as unpatentable under 35 U.S.C. §103(a) as unpatentable over Zimmerman (US 4,273,124) in view of Terada et al. (US 5,054,477). Claims 4-6 and 31 are rejected under 35 U.S.C. §103(a) as unpatentable over Zimmerman in view of Terada et al. as applied to claim 3, further in view of Djupesland (US 6,715,485). Claims 10, 13 and 15 are rejected under 35 U.S.C. §103(a) as unpatentable over Zimmerman in view of Terada et al. as applied to claim 1, further in view of Rimkus (US 5,890,491). Claims 14 and 32 are rejected under 35 U.S.C. §103(a) as unpatentable over Zimmerman in view of Terada et al. and Rimkus as applied to claim 13, further in view of Djupesland. Claims 17-19, 21 and 33 are rejected under 35 U.S.C. §103(a) as unpatentable over Zimmerman in view of Terada et al. as applied to claim 16, further in view of Sladek (US 4,951,661). Claims 22-24 are rejected under 35 U.S.C. §103(a) as unpatentable Zimmerman in view of Terada et al. as applied to claim 1, further in view of Salter et al. (US 5,584,285). Claims 25-27 and 34 are rejected under 35 U.S.C. §103(a) as unpatentable over Zimmerman in view of Terada et al. as applied to claim 1, further in view of Boiarski et al. (US 4,268,460). The rejections are respectfully traversed for the following reasons.

Zimmerman describes methods and apparatus for administering therapeutic gaseous substances into the nostril of a patient (col. 1, lines 6-8). A nasal cannula 10 shown in FIG. 1 of Zimmerman includes a fitting 14. Therapeutic gas is supplied continuously at a set flow rate through the fitting (col. 3, lines 23-30). A cannula 33 including a pair of bulbous members 16 and 34 is shown in FIGS. 7 and 8 of Zimmerman. A passage 36 through bulbous member 34 enables the patient to exhale (col. 5, lines 19-22). An embodiment illustrated in FIGS. 9-12 of Zimmerman includes an inflatable membrane 44 (col. 5, lines 25-43). However, Zimmerman fails to disclose a flow resistance device as claimed.

Terada discloses a nebulizer comprising a housing having a liquid reservoir and an atomizer space, an atomized liquid discharge port, a compressed air introduction pipe formed with a nozzle at an end thereof and a liquid suction pipe for sucking liquid in the liquid reservoir (Abstract). However, Terada fails to disclose a pressure connection device to supply pressure fluctuations which are superimposed on the aerosol main flow.

Amended claim 1 is directed a therapeutic aerosol device consisting of, in part, a nebuliser, a nosepiece configured to supply the aerosol into one of the two alae of the nose of a user connected to the nebuliser device, and a flow resistance device configured to be placed at the other of the two alae of the user's nose, the flow resistance device causing aerosol from the main aerosol flow having pressure fluctuations superimposed thereon to reach the paranasal sinuses of the user and to be deposited therein, the flow resistance device being interchangeable with other flow resistance devices having different flow resistances.

The nasal cannula disclosed by Zimmerman is very different from the claimed invention. First, Zimmerman relates to delivery of a therapeutic gaseous substance to the patient's respiratory system (col. 1, lines 9-11). By contrast, the present invention relates to delivery of an aerosol to the paranasal sinuses of a patient. It should be apparent that delivery of a therapeutic gaseous substance to the lungs is very different from a device for ensuring that liquid droplets in an aerosol reach the paranasal sinuses of the user.

Second, the bulbous member 34 shown in FIG. 7 of Zimmerman cannot reasonably be interpreted as a flow resistance device. Zimmerman states that the bulbous member 34 "communicates with ambient surroundings to enable the patient to exhale" (col. 5, lines 19-22). Furthermore, Zimmerman teaches that by inserting two bulbous members into the nose, "the intensity of attachment of the therapeutic device to the nose is increased" (col. 5, lines 22-24). Zimmerman contains no teaching whatever of a flow resistance device causing aerosol from the main aerosol flow having pressure fluctuation superimposed thereon to reach the paranasal sinuses of the user and to be deposited therein, as claimed. Zimmerman teaches that bulbous member 34 improves the attachment of the device to the nose, but does not teach that bulbous member 34 provides any type of flow resistance.

The Examiner asserts that "it would have been obvious to modify the aerosol source in Zimmerman to include a nebulizer as taught by Terada to provide efficient atomization of liquid to a patient during respiratory therapy" (Office Action, page 4). Applicant must respectfully disagree. Zimmerman does not teach an aerosol source, nor does Zimmerman teach a device for supplying an

aerosol to the nose of a patient. Instead, Zimmerman teaches a device for supplying a therapeutic gas to the patient (col. 3, lines 27-30). The skilled person is well aware of the difference between a therapeutic gas and an aerosol, and would not be motivated to connect the nasal cannula of Zimmerman to the nebulizer of Terada. Accordingly, the combination of Zimmerman and Terada is inappropriate and should be withdrawn.

In addition, it is submitted that neither Zimmerman nor Terada discloses *the flow resistance device being interchangeable with other flow resistance devices having different flow resistances*, as required by amended claim 1. Zimmerman fails to disclose a flow resistance device, much less a flow resistance device that is interchangeable with other flow resistance devices as claimed. Terada does not provide the teachings that are lacking in Zimmerman.

For at least these reasons, amended claim 1 is clearly and patentably distinguished over Zimmerman in view of Terada. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 2-7 and 9-34 depend from claim 1 and are patentable over the cited references for at least the same reasons as claim 1.

Based upon the above discussion, claims 1-7 and 9-34 are in condition for allowance.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance. A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed, or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. P0777.70000US00 from which the undersigned is authorized to draw.

Dated: January 11, 2011

Respectfully submitted,

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